

RESPONSE

The examiner states in the Office Action Summary that claims numbered 1-3 and 5-29 are pending in the application; claims numbered 1-3, 5-16, 21-26, 28 and 29 are rejected; claims numbered 17-20 and 27 are objected to.

(1) The examiner states the application fails to comply with the requirements of 37 C.F.R. §1.821 through §1.825 because the sequence listing received April 20, 2005, contained only one sequence, whereas there are eighteen numbered sequences in the specification.

Applicant encloses herewith a computer readable form (CRF) copy of the sequence listing, a paper copy of the Sequence Listing, as well as amendment directing its entry into the specification, thereby correcting this error. Support for this amendment is on page 23, line 23 through page 24, line 1 of the specification as originally filed. Applicant states the content of the paper and computer readable copies are the same and include no new matter.

(2) The examiner states the amendment filed April 20, 2005, canceling claim 4 is improper format under 37 C.F.R. § 121(c)(4)(i) because claim text is presented for the cancelled claim.

Applicant has corrected this oversight.

(3) The examiner has objected to the amendment filed April 20, 2005, under 37 C.F.R. § 132(a) because it introduces new matter into the disclosure of the invention.

Applicant has amended the specification to remove the incorporation by reference statement in the claim for priority.

(4) The examiner objects to claim 26 because at line 2 of claim 26 "is" is believed to be "of."

Applicant has amended claim 26 to correct this typographical error.

(5) The examiner states claims numbered 1-3, 5-16, 21-26, 28 and 29 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 and 31 of copending Application Serial No.: 10/307,678 (the “678” application, Attorney Docket No. 6440.200-US). The conflicting claims are not identical, however they are patentably indistinct from each other because the claims of the ‘678 application anticipate the present claims.

Applicant respectfully submits that following entry of the present amendments, the only remaining rejection will be the “provisional” nonstatutory obviousness-type double patenting rejection. Since this application is the earlier-filed of the two pending applications, according to M.P.E.P § 804(I)(B)(1), the examiner should withdraw the rejection and permit the earlier-filed application to issue without the terminal disclaimer, the terminal disclaimer being properly required in the later-filed application.

Applicant respectfully requests reconsideration and withdrawal of the “provisional” nonstatutory obviousness-type double patenting rejection of claims numbered 1-3, 5-16, 21-26, 28 and 29.

(6) The examiner states claim 26 is rejected under 35 U.S.C. §102(b) as being anticipated by Jeong et al. (J. Controlled Release, Vol. 1, pages 57-66, 1984).

Applicant has amended claim 26 to depend from claim 1, thereby obviating the examiner’s rejection under 35 U.S.C. §102(b).

Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. §102(b).

(7) The examiner states claims numbered 17-20 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant respectfully submits the rejection to the base claim has been overcome, thereby obviating the examiner's objection. Applicant respectfully requests reconsideration and withdrawal of the objection to claims numbered 17-20 and 27.

The examiner is hereby invited to contact the undersigned by telephone if there are any questions concerning this amendment or application. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

A handwritten signature in cursive script, reading "Rosemarie R. Wilk-Orescan", written over a horizontal line.

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